Unreportable
IN THE HIGH COURT OF DELHI AT NEW DELHI

+RFA No.335/2006 and CM 7305/2006

Date of Hearing: 30.07.2007
Date of Decision: 20.09.2007

#Sh. Purshotam Lal Kalra .....Appellant
! Through: Nemo

Versus

$Smt. Kamlesh Chopra & Others .....Respondents
^ Through Ms. Anjali Chopra

CORAM :-
***THE HON'BLE MR.JUSTICE A.K.SIKRI**
THE HON'BLE MS. JUSTICE ARUNA SURESH

1.Whether Reporters of Local papers may be allowed to see the Judgment?
2.To be referred to the Reporter or not?
3.Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.
:

1. This appeal is preferred against preliminary decree for partition passed by the learned Additional District Judge, Delhi on 31.10.2005 in a suit filed by the respondent No.1 herein for partition of property bearing No. 17/11, Shakti Nagar, Delhi-110 007 (hereinafter referred to as the 'suit property') against the petitioner herein and the respondent Nos.2 to 5.

2. We may state at the outset that keeping in view the relationship between the parties, on 6.12.2006 when this matter came up for hearing, counsel for the parties agreed for exploring the possibility of an amicable settlement through mediation. The matter was accordingly referred to the Mediation Centre and case was adjourned to 2.5.2007. On 2.5.2007, it was reported that compromise efforts had failed. The mediation report dated 9.2.2007 had been received to this effect. Counsel for the respondent, therefore, wanted that the matter be heard on merits. However, counsel for the appellant requested for an adjournment. While granting the adjournment and fixing the case for 16.7.2007, it was made clear that no further adjournment shall be granted and the case would be heard on the next date of hearing. The trial court record was also summoned for that date. On 16.7.2007 when the matter came up for hearing, there was again a request on behalf of the counsel for the appellant on the ground that counsel was indisposed. Matter was, therefore, adjourned to 30.7.2007. When we took up the matter on 30.7.2007 on its turn, counsel for the appellant was not present. We heard the counsel for

the respondent and waited for counsel for the appellant for more than one hour. Taking note of what transpired on previous hearing, we did not feel it proper to grant any further indulgence. Therefore, we reserved the matter for judgment. However, at the same time we granted liberty to the appellant to file written submissions, if any, within one week. Though we waited for over a month, the appellant had failed to file any written submissions either. Therefore, we are proceeding with the judgment on the basis of record and the submissions made by the appellant in the memo of appeal.

3. The appellant is the brother of the respondents. All these six siblings are the children of late Sh. Manohar Lal. Late Sh.Manohar Lal had inherited the suit property measuring 264 sq. yards from his father late Sh.Punnu Ram Kalra vide registered will dated 15.9.1978. He was, thus, the sole owner of the suit property and as he had inherited the said property through will, the property acquired the character of self-acquired property in the hands of Sh.Manohar Lal. He died on 15.9.2002 leaving behind his registered will dated 12.8.1996. As per this will, the suit property was to devolve upon his wife Smt. Amrit Devi

Kalra (mother of the parties to the litigation) and after her death, it was to devolve upon her son and five daughters in equal share. Smt. Amrit Devi Kalra died on 25.1.2000, i.e. even before the death of late Sh. Manohar Lal.

4. On the aforesaid basis, the respondent No.1 claimed that she, her other sisters (respondent Nos.2 to 5) and the appellant (defendants in the suit) had become the lawful co-owners of the suit property in equal share and, therefore, she demanded partition thereof and her 1/6th share therein. She also averred in the plaint that she was in occupation of the first floor of the suit property, which was given to her by her father during his life-time and the plaintiff and the defendant No.5 kept their dowry articles and other domestic goods on the said first floor. She also stated that the appellant herein was in possession of the ground floor. In the plaint she also mentioned that she had some matrimonial discord with her husband.

5. The suit was contested by the appellant alone. He alleged that suit property was a joint family property and was purchased from joint family funds in the year 1950 by late Sh. Punnu Ram Kalra, who was the *Karta* of the HUF. The house was built in the year 1954. The property

being an HUF property, late Sh. Punnu Ram Kalra had no right to execute the will and, therefore, the said will was of no consequence. Accordingly, even Sh. Manohar Lal could not and did not inherit the property by virtue of the will of late Sh. Punnu Ram Kalra and, therefore, he also could not write any will. Since the suit property was an HUF property, which was built from joint family funds, the respondents had no right or interest in the suit property. He also alleged that he was in possession of the entire property. He stated that the plaintiff was living with her family members in house No. D-267, Gandhi Vihar, Delhi and was not using or occupying any portion of the suit property. It was also alleged that the suit was not properly valued for the purpose of court fee and jurisdiction. Defendant Nos.2 to 5 also filed their joint written statement but they supported the case of the plaintiff. Following issues were framed from the pleadings of the parties:-

i. Whether the suit property is HUF? OPD
ii. Whether the Punnu Ram Kalra had right or authority to execute a will as the property was HUF? If so to what effect? If not to what

effect? OPP

iii. Whether Sh. Manohar Lal had authority to execute the Will as the property was HUF? If so to what effect? If not to what effect? OPP

iv. Whether the suit has been properly valued for the purposes of court fees and jurisdiction? OPP

v. Whether the plaintiff is entitled for the relief claimed for? OPP

vi. Relief.

6. As is clear from the issue Nos. (ii) and (iii) as well as the defence taken in the written statement, the execution of the will by late Sh. Punnu Ram Kalra as well as late Sh. Manohar Lal was not disputed. However, their right to execute such a will in respect of the suit property was disputed by the appellant/defendant No.1 on the ground that it was an HUF property. Therefore, the central issue was as to whether the suit property is an HUF property on which issue No.1 was framed and onus of proving this issue was on the defendant No.1. Both the parties had led their evidence in support of their respective cases. The learned ADJ has held that the suit property was not

the joint family property as there was no credible evidence to support the plea of the defendant No.1 that the suit property was purchased by late Sh. Punnu Ram Kalra from any joint family funds or it was built using joint family funds.

7. The evidence, which has come on record, would show that late Sh. Punnu Ram Kalra had purchased the suit property from Sh. Nand Lal Raj Pal through conveyance deed dated 28.8.1950 (Ex. PW 1/3). In furtherance thereof, sale deed was also executed by the DDA in favour of Sh. Punnu Ram Kalra on 10.6.1976 (Ex. PW 1/4). The plaintiff had also produced PW-2 and PW-3, officials from the office of the Sub-Registrar, Kashmere Gate, Delhi, who had proved the sale deed. PW-4 was a UDC from the DDA, who had also proved the sale deed. The plaintiff had also produced PW-5, an official from Delhi Archives, who proved the conveyance deed executed by Sh. Nand Lal in favour of Sh. Punnu Ram Kalra relating to the suit property, i.e. Ex. PW-1/3. As against the aforesaid evidence, the defendant No.1 could not produce any evidence to show that late Sh. Punnu Ram Kalra had purchased the property from joint family funds. He had

appeared as DW-2 and in his cross-examination he accepted that he had no documentary evidence in his possession to show that his father and grandfather were living together with his grandfather as *Karta* of HUF. He also deposed that he had no personal knowledge about the details of the suit property and how it was purchased and who paid the consideration. He even admitted that the suit property was purchased by his grandfather, who at the time of purchase, was in the employment of Indian Railways. He also accepted that in the sale deed of the suit property there is no mention of HUF. He also conceded that neither his father nor he himself had made any claim or representation with any authority whatsoever that the suit property belonged to HUF or that they were coparceners of the same. He even admitted that his grandfather had treated the suit property as his own property during his life-time. Interestingly, to a question put to him in his cross-examination in respect of will of his grandfather (Ex.PW 1/6), he did not give any specific reply and simply stated that he was not aware of the said will and did not want to say anything with respect to the said will. He also stated that he could not

give details of individual contribution made by his family members.

8. In view of the aforesaid evidence and the material on record, we are of the opinion that the learned trial court rightly held that the defendant No.1 did not produce any evidence worth the name to prove that the suit property was an HUF property. He had rather admitted to the contrary in his deposition. Admittedly, though the conveyance deed and the sale deed are in the name of late Sh. Punnu Ram Kalra and not the HUF, these documents were not challenged at any time by the defendant No.1.

9. In *R. Dalip Kumar Vs. S. Ramu*, XI-1992 (3) Current Civil Cases 613, Karnataka High Court has held that: "no presumption that any particular property held by a member of a joint family is the property of the undivided Hindu Joint Family. Property standing in the name of the respondent since the time of its purchase in 1979. No material produced to prove that the property was purchased for the benefit of the co-parceners in the family."

10. The property in question was, therefore, not the HUF

property but self-acquired property of late Sh. Punnu Ram Kalra, which was bequeathed by him to his son late Sh. Manohar Lal vide will dated 13.9.1978 (Ex. PW 1/6). The learned ADJ has rightly held that this will is proved. Will dated 12.8.1996 executed by late Sh. Manohar Lal is also proved. In fact, as mentioned above, the defendant No.1 did not even deny the execution of these wills but questioned the capacity of those persons to bequeath the suit property by way of those wills. In any case, there is a detailed discussion on issue Nos.(ii) and (iii) about the proof of these wills, which could not be questioned. Therefore, we are of the view that the findings of the learned trial court on issue Nos.(i) and (iii) are in accordance with the material on record and the law and there is no scope for interference with the same or taking contrary view. The findings on issue No.(iv) also cannot be faulted with inasmuch as, it has come on record that part possession of the suit property, namely, the first floor is with the plaintiff. The defendant No.1 had even admitted that after the death of husband of the plaintiff on 10.12.1992, she had lived for some time in the suit property. Further, the plaintiff had categorically deposed

that she was receiving rent from the mezzanine floor and no suggestion was given to the plaintiff on this aspect in the cross-examination. It is, thus, clear that all the children of late Sh. Manohar Lal, namely, the plaintiff and the defendant Nos.1 to 5 have equal share in the suit property. The defendant No.1 (appellant herein) cannot claim himself to be owner of the said property to the exclusion of his five sisters.

11. This appeal is accordingly dismissed with costs.

(A.K. SIKRI)
JUDGE

September 20, 2007
HP.

(ARUNA SURESH)
JUDGE